IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.9/2003

(1) Corlim Education Society,
a Society, registered under the
Societies Registration Act Under
No.71/85, through its President
Dr. Kashinath G. Jalmi, having
registered Office at House No.210,
Corlim, Ilhas, Goa.

(2) Dr. Kashinath Jalmi, President
of Corlim Education Society,
having registered Office at
House No.210, Corlim, Ilhas, Goa. .... Petitioners.

V/s.

(1) The Director of Education,
Directorate of Education,
Government of Goa,
18th June Road, Panaji, Goa.

(2) The State of Goa, through its
Chief Secretary, having its
Office at Secretariat, Panaji, Goa.

(3) Vishwanath Naik, son of
Mahadev Naik, Advocate aged about
50 years, residing at
Old Goa, Tiswadi, Goa. ..... Respondents.

Mr. M.S. Sonak, Advocate for the petitioners.

Ms. Winnie Coutinho, Govt. Advocate for respondents No.1 and 2.

Mr. M.B. D'Costa, with Mr. J.A. Lobo, Advocates for respondent No.3.

CORAM: F.I. REBELLO &
P.V. HARDAS, JJ.

DATE: JUNE 4, 2003.

ORAL JUDGMENT: (Per Rebello, J.)

Rule. Rule made returnable forthwith. By consent of parties, heard forthwith.

2. Petitioner No.1 is a society, registered under the Societies Registration Act. Petitioner No.2 has approached this Court claiming as the President of the Society. Respondent No.3 who had applied to intervene and has been added as party, also claims to be the President of another committee which, according to respondent No.3, was also elected by a duly convened Annual General Body Meeting.

3. The petitioners have approached this Court to impugn the order of the first respondent taking over management of the School run by the first petitioner-Society by order dated 12.7.2002 in purported exercise of powers under Section 20 of the Goa School Education Act, 1984 (hereinafter referred to as "the Act"). The order proceeds on the grounds that there were continuous disputes in the Management between two rival groups, resulting in several litigations; two groups of teachers were formed in the School, which was detrimental to the cause of education; the Management had mismanaged the affairs of the School; the Management has managed the affairs of the School in the manner prejudicial to the public interest. The show cause notice was issued to the Managing Committee, of which respondent No.3 claimed to be the President. No notice was given to petitioner No.2 who was also claiming as the President of the Committee. Shri G.L.

Pernekar, Director of Education has filed an affidavit before this Court. From the affidavit what is apparent is that the Management of the school had been taken over because of the disputes between the two rival groups. It is in that context that the order of respondent No.1 will have to be examined. It may be pointed out that the allegations of misappropriations were being made against the Committee led by petitioner No.2 by the rival Committee of which now the respondent No.3 is the President. It may also be relevant to note that the Committee led by respondent No.3 did not take any steps to challenge the order of taking over management.

4. Certain facts may be adverted to for the purpose of appreciating the controversy :

The Society was registered under the Societies Registration Act. The Managing Committee of which petitioner No.2 claims to be the President, according to them, was elected on 31.8.1997. One of the office bearers of the said Committee was Mr. Rayu D. Naik whose designation was that of an Executive Secretary. On 24.12.1997, the Registrar of Societies took on record the names of the said Managing Committee. At that time, as the petitioner No.2 was claiming to be the President of Society, a Writ Petition came to be filed before this Court being Writ Petition No.50/98 by one Shri Govind B.

Parvatkar as the President of the rival Managing Committee of Corlim Educational Society and Shri D.D. Mangadkar as the Executive Secretary of that Managing Committee. The respondents therein were the petitioner No.2 herein, Rayu D. Naik and others who were claiming to be the Members of the Managing Committee of the Society. This Court, by order dated 16.2.1998 dismissed the petition on the ground that there were disputed questions of facts. Subsequent to the dismissal of the petition, the Society as well as Shri Govind Parvatkar as President filed a Regular Civil Suit which was numbered as 54/1998/B before the Court of Civil Judge, Sr. Division, at Panaji. The defendants in the said suit are those who were claiming as Members of the Managing Committee duly elected on 31.8.1997. Interim relief by way injunction was sought. The learned trial Judge by Order dated 5.9.1998 refused to grant an injunction for the reasons set out in the order. It may be mentioned at this stage that the application for temporary injunction was to restrain the defendants therein from styling themselves as the Members of the Managing Committee and to stay the approvals granted by the Director of Education Respondent No.1 by letter dated 19.5.1998 to the Committee led by petitioner No.2. An appeal was preferred against the said order which was numbered as Misc. Civil Appeal No.78/98. The learned appellate Court by order dated 20.11.1999 dismissed the

appeal. There are some prima facie findings given by the appellate Court why the meeting conducted at which petitioner No.2 was elected, was valid, as the meeting was convened by the Executive Secretary by notice dated 19.8.1997. That order continues till date, though both the Committees in the meantime claim that they have held fresh elections in the year 2000 and now in the year 2003.

5. After the elections of 1997, the Asst. Director of Education by letter of 19.5.1998 wrote to the petitioner No.2 that the scheme of management prepared by the Management was approved subject to what is set out in the said letter. By letter of 21/9/1998, the Asst. Director of Education communicated that the Managing Committee whose names are set out therein is constituted for the period from 21.9.1998 to 20.9.2001. In other words, for the triennium 1998 to 2001 at least there was material to show that approval had been granted by the relevant authorities to the Committee led by petitioner No.2, though, as stated earlier there was another committee led by Mr. Govind Parvatkar who also claimed to be the President of the rival Managing Committee of the Society.

6. The registration of the Societies in terms of the Societies Registration Act, as amended in Goa, is

initially for a period, after which it has to be renewed by applying in the prescribed manner. Petitioner No.2 wrote to the District Registrar to take on record the names of the newly elected committee. The District Registrar wrote to petitioner No.2 by letter of 4.9.2000 that certificate of registration of Corlim Educational Society has not been renewed after 11.6.2000 as made mandatory under Section 3(B) of the Societies Registration Act (Goa Amendment). Thereafter, petitioner No.2 took steps to get the registration renewed. Respondent No.3 was informed by letter of 4.1.2001 by the District Registrar that considering the application for renewal, the issue of granting renewal of Certificate of Registration for petitioner No.1 was referred to the Government under Section 3(C) of the Societies Registration (Goa Second Amendment) Act, 1998 and as per the decision of the Government received on 2.1.2001, the Office of District Registrar had granted the renewal of Certificate of Registration in favour of the managing committee led by Dr. Kashinath Jalmi. The names of the Office Bearers of the committee recognized for the period 1.9.2000 to 31.8.2003, at serial No.3 shows Shri Rayu D. Naik as Executive Secretary. Respondent No.1, however, recognized the managing committee headed by respondent No.3 by letter dated 8.8.2000. To complete the narration, by letter dated 21.9.1998, respondent No.1 had granted recognition to

the managing committee of the School headed by petitioner No.2 for the period 21.9.98 to 20.9.2001.

7. The term of rival managing committees of petitioner No.1 would, normally, be expiring in August, 2003 and March, 2003 respectively, as per the pleadings. Both, petitioner No.2 and respondent No.3 have filed list of members of their respective committees before the District Registrar. A letter dated 29.4.2003, addressed on behalf of respondent No.3 to the first respondent, has been handed over at the Bar therein enclosing an extract which indicates that an application has been filed for placing on record the names of the duly elected office bearers led by respondent No.3 before the District Registrar. But a note appended also sets out that another list of the Managing Committee of the same Society has been filed in the Office on 1.4.2003. It may also be relevant to note that respondent No.1 had, by letter of 21.9.1998, noted that the Managing Committee of the School was for the period 21.9.98 to 20.9.2001.

8. At this stage, we may consider the constitution of the society as well, as the same will have a bearing on the ultimate relief that may have to be granted. One of the posts is that of Executive Secretary. The Executive Secretary has to be elected by

3/4th majority of votes of the General Body present for the meeting and shall be the chief functionary of the Association. All the activities of the Association shall be conducted in the name of the Executive Secretary. The Executive Secretary will be the permanent member of the Managing Committee. The Executive Secretary is to continue to function till his death or resignation or termination by 3/4th majority of votes of the General Body. The Executive Secretary shall convene the General Body Meeting and Managing Committee Meetings of the Association. This has been adverted to. As per the constitution of petitioner No.1 Society, the meetings of the General Body and of the Managing Committee, have to be convened by the Executive Secretary. There is a dispute between petitioner No.2 on one hand and respondent No.3 on the other as to who really is the Executive Secretary. That partly is the subject matter of the Civil Suit. However, at this stage, there is at least a prima facie finding that Shri Rayu Naik is the Executive Secretary, considering the orders of the Civil Court in the matter for interim relief, which has been confirmed by the appellate Court. Apart from that, there is a decision by the Government in exercise of its powers under Section 3-C of the Societies Registration Act, as amended in the State of Goa. There is an affidavit of Shri Rayu Naik on record which was filed with the District Registrar along with

20 others who claim to be the Members of the First Petitioner. In that affidavit dated 29.8.2000, in paragraph five, Rayu Naik has averred that he was elected on 31.8.1997 as the Executive Secretary of the Society and that he continues to be the Executive Secretary of the Society and can continue to be so until removed by 3/4th majority. He has specifically set out that he was not advised by the President of the Corlim Educational Society to convene any General Body Meeting of the Society on 26.3.2000, nor had he received any requisition from any members to convene any special General Body Meeting of the Society. Considering this affidavit and the other material earlier considered, it would have to be held that Rayu Naik is the Executive Secretary until a competent Civil Court decides otherwise. It is not the case of respondent No.3 that he was elected at a meeting convened by Shri Rayu Naik. It would be difficult to hold at this stage that respondent No.3 can claim to be the President of petitioner No.1 Society. Respondent No.3, on the contrary, claims that Shri Damu Mangadkar is the Executive Secretary. While granting approvals to the Managing Committee of the Society, the Government has accepted Rayu D. Naik as Executive Secretary of the Society. In fact, by letter dated 4th April, 2003, the District Registrar had issued a letter to respondent No.3 and to Rayu D. Naik as Executive Secretary.

9. On 22.5.2001, a show cause notice (Memorandum) was issued by the first respondent. The basis of the show cause notice was the tussle/conflict between two groups. In that context, the respondent No.1 observed that there was reason to believe that the management of the school had (i) mismanaged the affairs of the school; and (ii) has managed the affairs of the school in a manner prejudicial to the public interest. In the affidavit of respondent No.1, it is set out that the said show cause notice was issued to the school Managing Committee headed by Advocate V. M. Naik. It was Advocate V.M. Naik who replied to the said show cause notice. In other words, all the alleged acts of mismanagement were addressed to the Managing Committee led by respondent No.3 whom respondent No.1 had purported to recognize as the Managing Committee of the School by letter dated 8.8.2000 though as per the earlier letter of 21.9.1998 the term of the Managing Committee appointed earlier would be expiring on 20.9.2001. It is based on the reply filed by respondent No.3 that respondent No.1 issued the order dated 12.7.2002 under the provisions of Section 20 of the Act. Copy of the memorandum was not served on the Committee led by petitioner No.2, as is evident from paragraph 14 of the affidavit of respondent No.1. However, the order proceeds on the footing that the representations of both the groups and the allegations levelled against each

other, had been considered.

10. The respondent No.3 though claimed to be in management did not take any steps to challenge the take over of the management of the School by respondents No.1 and 2. It is the petitioners who approached the Court to challenge the order. It is at this stage respondent No.3 intervened and sought to be impleaded, which was allowed by the Court. At the beginning, both the petitioners and respondent No.3 are at ad idem that the order taking over the management has to be set aside.

11. Though various grounds have been raised in the petition, the main challenges as argued, are as under :

(a) the order taking over proceeds on the footing that petitioner No.2 was given an opportunity of hearing and representations were made by petitioner No.2. On the contrary, the affidavit of respondent No.1 itself would show that the show cause notice was only served on respondent No.3 and it was respondent No.3 who filed reply to the show cause notice. In the circumstances, the order is liable to be set aside on the

ground of violation of the principles of natural justice and fair play.

(b) The Memorandum dated 22.5.2001 proceeds on the footing that there were disputes amongst members as to which was the Managing Committee. The Civil Court, in respect of the period 1997-2000 had rejected the application for interim relief filed by Govind Parvatkar, who is in the same group as respondent No.3. For the period 2000-2003, the District Registrar, based on the decision of the Government, had recognized the Committee led by the petitioners, as communicated to the respondent No.3 by letter dated 4th January, 2001. The committee led by respondent No.3 was, therefore, the legally recognized Managing Committee of the Society. The Executive Secretary is Rayu Naik who is there from the year 1997 and who had filed an affidavit to show that he had not convened any meeting at which respondent No.3 claims to have elected. The Memorandum, therefore, proceeds on non-existing grounds. Merely because some members claim to be a rival managing

committee could not by itself be a ground for taking over management or that there are groups amongst themselves. The impugned order is, therefore, liable to be set aside.

12. The question would be whether the order taking over the management of the School can be sustained. As pointed out earlier, the show cause notice was issued on 22.5.2001 and the order taking over the Management is dated 12.7.2002. In between, as noted earlier, respondent No.1 State in terms of letter dated 4.1.2001 addressed to respondent No.3, had issued a renewal certificate of registration in favour of the Managing Committee, led by Dr. Kashinath Jalmi. Apart from that, the other important relevant factor is the order of the appellate Court dated 20.11.1999, wherein the Committee led by petitioner no.2, prima facie, had been recognized. In our opinion, therefore, the show cause notice and the subsequent order must suffer from the fact that it disclosed total non-application of mind on the part of respondent No.1. Apart from that, respondent No.1 addressed itself to irrelevant considerations. While considering the question of taking over the management what would be relevant would be that there is material to satisfy one of the predicates as set out in Section 20(1) of the Act. It was not the case of respondent No.1 herein that there

was any contravention of the provisions of the Act or of any rule or order made thereunder, or any neglect to perform any duty or obligation imposed or or mismanaged the affairs of the school or misappropriated or misapplied any money standing to the credit of any fund of the School. The memorandum addressed to respondent No.3 and not to petitioner No.2. Even otherwise, the main ground was that there are disputes between two groups in the Society. That by itself cannot be a ground for respondent No.1 for taking over the management of the School. Firstly, respondent No.1 while considering this aspect, would have to address himself to the various material which was available. In the instant case, respondent no.1 himself for the triennium 1998 to 2001 recognised the Managing Committee of the School led by petitioner No.2. Secondly, the Civil Court had rejected the contention of the rival Managing Committee. The Government has accepted for the triennium 2000 to 2003 the Committee led by petitioner No.2. In these circumstances, it could not have been said that there were two rival Managing Committees, as in the eyes of law, prima facie, there was only one Managing Committee which was recognized. More importantly, under the Bye-laws of the Society, prima facie, it was Shri Rayu Naik who continues as the Executive Secretary. The meetings had to be convened by the Executive Secretary. Respondent No.1 while passing

the order of taking over the Management of the School has totally misapplied his mind. As such, the impugned order is liable to be set aside on this ground alone.

13. The show cause notice or memorandum is dated 22.5.2001. Respondent No.1 by letter of 21.9.1998 had accepted the managing committee of the School led by petitioner No.2, for the period 21.9.1998 to 20.9.2001. When the memorandum was issued, therefore, that managing committee continued to be in management, though respondent No.1 by letter of 8.8.2000 purported to give recognition to the school managing committee led by respondent No.3. Even, if that be so, as there were two rival committees, the committee led by petitioner No.2 had also to be given an opportunity of being heard. The affidavit of respondent No.1 would show that no such opportunity was given. Inspite of that, respondent No.1 has proceeded on the footing that the representation by petitioner No.2 has been considered. The order stands vitiated on the grounds of violation of the principles of natural justice and fair play.

14. Once that be the case, the question is with whom the Managing Committee of the School will have to be handed over. As we have indicated earlier, there is material showing that it is the Committee led by petitioner No.2 which has been validly elected and was recognized. Once that be so, it is expedient to hand over the Managing Committee to the petitioner No.2 for

managing all the affairs subject to their complying with other requirements, as required in terms of the School Education Act and the Rules framed thereunder. There is a dispute between the two rival groups, which is pending before the Civil Court and hence the interest of justice would require that the suit be expeditiously decided. Civil Judge, Sr. Division, Panaji is directed to dispose of Regular Civil Suit No.54/98/B within six months from today. It is made clear that we have directed the respondent No.1 to hand over the management to petitioner No.2 purely based on prima facie findings and it would be open to the Civil Court to decide the matter without being influenced by whatever observations made in this Judgment based on the evidence before it.

15. In the light of that, following Order :

Rule made absolute in terms of prayer clause (a). Rule is also made absolute in terms of prayer clause (b), subject to the decision that may be given by the Civil Court, after hearing the parties.

Rule made absolute accordingly, with no order as to costs.

F.I. REBELLO, J.

P.V. HARDAS, J.